

see that they have the support and the resources to do their job. Their lives, and ultimately our way of life, depend on it; it depends on them. But this proposal we are debating now doesn't help them. Our military strategists, our leaders in the field, do not want this legislation.

Of course we need a plan to defeat al-Qaida in every corner of the world where this wretched terrorist group hides. We need to focus on the terrorists and defeat them at every turn. But is it Congress's role to insist on a plan and then share the plan with al-Qaida? That is ultimately what this legislation would do. If Congress forces the administration and our military to write this plan according to Congress's specification, then Congress is going to want to see the plan to ensure it meets Congress's requirements. We all know Congress cannot keep a secret. If you tell the enemy your strategy, then your strategy will not work. This is a bill that is fundamentally flawed at the outset. I voted not to debate the bill. I was one of three, but a bill not worth doing is a bill not worth debating.

Just before September 11, 2001, I was given the opportunity to serve on the Senate Foreign Relations Committee. I was the ranking member of the Subcommittee on International Operations and Antiterrorism. It was during August that I was assigned to that. So in September, since I was the newest person on the committee and the least ranking, a lot of people said: How did he get on that committee? It wasn't important until after September 11, 2001—or at least we didn't place that kind of importance on it. Through that role, I was given the opportunity to work directly with other countries at the United Nations on ways to stop terrorism. I am an accountant, so I was delighted to be a part of the group that said one of the answers was to concentrate on following the money. It made a huge difference and it continues to make a difference. Countries that will never publicly admit to helping in the hunt for terrorists have helped. I know countries peer pressured other countries into helping with the fight against terrorism. Terrorists were caught, they were prosecuted, and some were executed. More sophisticated versions of this plan to fight terrorism are still in operation today. But we should not disclose the plan because that would make them worthless.

The Senate wants additional reports. Why? Congress has already mandated reports on the National Security Strategy of the United States, the National Defense Strategy of the United States, the National Homeland Security Strategy of the United States, the National Military Strategy of the United States, the Quadrennial Defense Review Report, the National Military Strategic Plan for the War on Terror, the National Military Strategy to Combat Weapons of Mass Destruction, the National Strategy for Victory in Iraq. Does that sound like plenty of work for the Pentagon?

I want you to know the Pentagon is already doing what this bill wants us to do. We do need a plan. We have a plan. We cannot make that plan public without allowing the enemy to figure out how to combat every article in it. Why are we having this debate? Well, I know we are having this debate partly to place emphasis on the fact that we need to get the FISA legislation passed. Daily, we are missing opportunities to know what al-Qaida is doing and planning. We were able to do that until about a week ago. Congress could easily approve the FISA bill. It passed out of this body by a significant majority. The House needs to pass it and send it to the President. What does that bill do? One of the things it does is make terrorists almost as accountable as drug dealers. Yes, we have stronger laws in this country for drug dealers and the way to interdict that than we do for terrorists, without having the FISA bill.

What do the American people want Congress to do? They want us to improve their ability to access quality health care. They want us to have the capability under FISA, but they want us to concentrate on those areas that we have specific jurisdiction on, not just checking up on other people to see if they are getting their work done but checking up on ourselves to see if we are getting our work done. I think the economy, which includes health care, is the biggest issue the American people are interested in. Are we debating that? No. We are debating something I think we already have had 36 votes on in various forms, all of which failed. If you try something 36 times and it doesn't work, maybe you ought to move on to something else. I am suggesting health care is one of those issues we ought to be working on and that we could work on and that comes under our jurisdiction and we have direct responsibility for it. Or maybe education. I know the people of America want better education for their kids. They expect us to have as much as possible in place that will expedite that, that will work with the parents, the teachers, the administrators, and the communities to make sure our kids have the best job opportunities in the world. They want them to be able to have jobs and afford a home and have food for their family. They want a retirement system that helps them to be secure when they finish working.

That is why I voted against debating this bill. We are not here to be non-responsive and nonproductive by taking nonactions. Let's act. Let's sit down together and come to an agreement on what we can do to make health care better for this country. Let's talk about what we can do to improve education in this country and then let's make it happen. Let's spend the Senate's time on real legislation of substance—ones we are supposed to solve and that we have the jurisdiction to solve and ones we have the ability to solve and ones we have the desire to

solve. I have been working with people on both sides of the aisle on a number of bills that are solvable—maybe not to perfection, but hardly anything here winds up with perfection. They can be solved with 100 percent agreement across the aisle on the 80 percent of the issues that we agree on. That would be real progress for America.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GREGG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Mr. President, I understand we are in morning business.

The PRESIDING OFFICER. Morning business has expired.

Without objection, the Senator is recognized.

FOREIGN INTELLIGENCE SURVEILLANCE ACT

Mr. GREGG. Mr. President, I rise to speak briefly about one of the issues that has been debated over these 2 days, which is the reauthorization of the Foreign Intelligence Surveillance Act. This bill, which passed the Senate in a bipartisan way, is now sitting in the House. This bill is critical to our national security.

I know there are some who will argue that the bill represents a threat in some way to American civil liberties. From my standpoint, nothing is more important to me than protecting the rights of Americans under the terms of our Constitution.

One of the terms of our Constitution is that the Federal Government has the responsibility to protect the American citizens and America from attacks by enemies. That is what we swear an oath to, by the way, when we take this job, to protect and defend this Nation.

We know for a fact that the forces of Islamic fundamentalists, which are led by fanatical individuals, have committed themselves to attacking our Nation, destroying our culture, and killing Americans. We have already seen their actions take place in the 1990s when they attacked the warship *USS Cole*, when they attacked our Embassies in Africa, and, of course, on 9/11.

We also know for a fact that our best weapon of self-defense in this war is to be on the offense, to find them before they can harm us. That is one of the reasons we are in Iraq and in Afghanistan.

The great advantage we have in this war is the sophistication of our Nation. Obviously, the greatest advantage we have is we have the cause of right on our side—freedom, democracy, and liberty. But the great tactical advantage we have is the sophistication of our Nation and our capacity to use that sophistication in the area of our military

and in the area of our intelligence gathering to defeat these people before they attack us. At the essence of this, at the center of this is the ability to gather effective intelligence.

We cannot stop someone who wants to attack us if we wait until they commit the act. This is not like a criminal situation where somebody goes out and robs a bank and then we go and find them. This is a situation where people want to use every weapon at their disposal, and if they get a weapon of mass destruction, they will use it to try to kill hundreds, thousands, tens of thousands of innocent civilians, and Americans specifically, in order to carry out their perverse purpose of promoting what they see as their Islamic faith, as they interpret it.

We cannot be so naive as to believe these people are not out there and intending to pursue these courses of action when they have made it absolutely clear that is what they intend to do, when they have said innumerable times that is what they intend to do, and when they have actually done it by attacking us on 9/11.

To stop them, we have to find them before they can harm us. And the way we find them is we use, in part, our great advantage in the area of tracking them through electronic surveillance. And that is what the FISA bill is all about—giving the legal tools necessary to totally dedicated American citizens who man agencies, such as the National Security Agency, the Defense Department, the CIA, the State Department, and the FBI—to give those individuals who are totally dedicated to finding the people who want to attack us the tools necessary to do that, and to do that in a way that protects Americans' rights and civil liberties. This law does accomplish exactly that. No American can have their calls intercepted or overheard intentionally unless there has been a court review of that decision and a court order approving that action.

This law is directed not at Americans, it is directed at foreigners—not Americans—whose purpose it is to do us harm, and they do not have the same rights as Americans. They should not. Their purpose is to destroy America. Why would we give them American rights? Yet for some reason the House of Representatives refuses to act on this critical issue in the area of giving our people who work for us, who work for the American people, and who are trying to protect America, the tools they need to accomplish that. It makes no sense to me at all.

Some argue the force behind denying this right and these authorities to the people who have responsibility to monitor these foreign activities and foreign individuals, these Islamic fundamentalists who wish to do us harm, the terrorists, the people who wish to limit that right wish to do so because they want to give the trial lawyers more capacity to bring lawsuits against the telephone companies, which are, obvi-

ously, an integral part of any electronic monitoring that is going to go on. I think that is unfortunate if that is the case.

We have asked these various groups, these corporations—remember, they are made up of American citizens. An American corporation is nothing more than a group of American citizens who have gotten together. Most of these corporations are pension funds which involve pensions of people who work at day-to-day jobs. Most Americans have some interest in stock through their pension funds, and these stocks are the companies that, basically, we are talking about, the telephone companies, in many instances.

These companies are being asked, and have been enlisted, and have been asked in the past to participate in protecting America. When the Government does something such as that, I think the Government also has a responsibility to say to those companies and their stockholders and their employees, many of whom are Americans, many of whom are working Americans, obviously, the ones who work for them and the stockholders who have pension funds who invest in them, that they should have protection from lawsuits which are basically inappropriately pursued because these companies are doing the bidding of the American Government as we try to protect the American people.

For some reason, the desire to energize those lawsuits has held up the ability to give the tools necessary to our intelligence community to pursue surveillance of very evil people who intend to do us harm.

It would be a great tragedy and a terrible outcome of this situation if America is attacked and that attack could have been thwarted or muted if we had the intelligence which would have been able to be gathered by electronic surveillance which would be made available through the authorities of FISA. It would be a true tragedy. I cannot imagine the recrimination that would occur in this country from the American people were we to be attacked and then discover that the information which might have thwarted that attack was unable to be obtained because the law which gave people the authority to pursue that type of information through electronic surveillance was being held up in the House of Representatives because the trial lawyers want a cause of action against the telephone companies.

It is incomprehensible to me that we have gotten to this point in the process of trying to develop our defense as a nation against people who clearly exist and who have expressed their intent so clearly and who have executed on that intent, as was shown on 9/11.

I cannot imagine that when a bill passes the Senate which has bipartisan support—this is not a partisan issue. It should not be a partisan issue. It has bipartisan support. It came out of the Senate, and it has been worked out be-

tween the leaders of the key committees in the Senate in a way that protects American civil liberties—that such a bill which gives the authority to those we ask to protect us, the authority they need to pursue the course of action they see is appropriate in electronic surveillance, that such a bill would be stopped in the House of Representatives out of what appears to be a tangential question of lawsuits—tangential in the sense that nothing is more critical to this whole exercise than protecting Americans from attack.

I join my colleagues who have risen over the last couple of days to express their frustration with the failure of the House of Representatives to act in this area. We need the House to act on the Senate bill, pass it, send it down to the President, and have it signed so that the people who we ask to protect us through electronic surveillance of terrorists who do not have the rights of Americans and who are not American, so that electronic surveillance can continue.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I am sorry that the Senator from New Hampshire, who spoke relative to the Foreign Intelligence Surveillance Act, has left the floor. I was hoping he would be here. That is why I came down. Senator GREGG is a friend of mine, and I certainly wanted to make my remarks in front of him. I hope if he is nearby that he will come back to the floor.

He raised some serious questions about the security of the United States, and we have no greater responsibility under the Constitution than to protect this great Nation. The tragedy of 9/11 is still fresh in our memories, even though it was 6½ years ago. We know that when we work together on a bipartisan basis we can achieve the kind of results the American people expect, not only of the Congress but of our entire Government.

This Foreign Intelligence Surveillance Act has been the source of some frustration. Understand how this started. This is a program where the Government listens to the communications of other people in the hopes that they can intercept information and with that information avoid another tragedy. That is time and money well spent. The best line of defense against terrorism is good intelligence. We want to stop the 9/11 events of the future from ever occurring. So we certainly are all on board for that effort.

Here is the problem: The administration started doing this without the authority of law. There was a provision in

the law which said that if this President, or any President, for purposes of national security and gathering of intelligence, wanted to reach out to find this information in the United States, there was a court that was established, a FISA Court, Foreign Intelligence Surveillance Court, and this court would approve surveillance orders in secret, on an expedited basis, using a lower standard than a normal court. That was the standard in the law. It was a standard that was consistent with our Constitution.

If our intelligence agencies want to listen in on the conversation of an American citizen in this country, it is necessary to go for a court order. So, when it comes to the privacy of American people, you have another branch of Government looking at the executive branch of Government, saying: This is fair, this is constitutional, this is legal, you can do this. In the criminal justice process, there is reasonable cause to believe that a crime has been committed. Similarly, in the FISA area—the area of foreign intelligence surveillance—there is a reasonable belief that a suspected terrorist or spy is involved in the communication.

Now, the FISA court was very cooperative with every President. In fact, it overwhelmingly approved requests, and in only a tiny percentage of cases were questions ever raised. If the President, through his agencies, said, I need to listen in on a conversation, this court said, yes, do it, keep America safe, in the overwhelming majority of cases. So it wasn't a novel process. It was one well established in the law, but it was one that this administration avoided.

They started this surveillance program, the so-called warrantless wiretapping program, but didn't follow the existing law. They didn't go to the existing court. They did it on their own, and they did it for years. It wasn't until this program was disclosed to the American people by the New York Times that we had any personal knowledge that it was going on. There may have been a handful of Members of Congress at the highest levels of the Intelligence Committee who knew about it, but most of us did not and weren't given the information.

So the information becomes public that this warrantless wiretapping is going on after 9/11, a program not authorized by law, and it is challenged in court. When the court takes a look at it, the court says, as good as the reason may have been for this program, as good as its purpose may have been, this President, no President, is above the law. You need a law authorizing you to do what you are currently doing. So then the President came to Congress asking for changes in the Foreign Intelligence Surveillance Act so the power of the President over the new technology that is available around the world would be consistent with the law. That is the legislation that is before us, a bill to amend the Foreign Intelligence Surveillance Act.

We talked about changes in the law, and we made changes in the law. We were moving along on, I think, a positive track toward reforming, changing, amending this law to meet the current needs of keeping America safe. But there was one nagging issue out there, and it was the issue of telephone companies. Here is what it was all about.

Telephone companies doing business in America have a responsibility under the law. That responsibility is to protect the identity and the communications of their customers. If I sign up with my BlackBerry or my cell phone with a telephone company, it is with the confidence that the company that is transferring my communication and my conversation is going to protect my privacy unless—unless a court steps in and says, we have reason to believe a crime was committed or that a party to this conversation is a terrorist or a spy. We need to listen in to this conversation. That has been the standard in America. It was the standard facing the telephone companies.

So the President, through his intelligence agencies, during the period when this warrantless wiretapping program was going on—before it was made public; before it was authorized by law—went to the telephone companies and said, we want the conversations of certain people who are your customers. So the question is: Were the telephone companies doing their patriotic duty under the law by turning over this information, or did they go too far? Did the President misrepresent his authority at that time, or did he not?

These are legitimate questions. Some say, well, wouldn't we err on the side of caution and say to the telephone companies: Cooperate. We don't want another 9/11. Well, of course, we would. And you can understand in the heat of the moment, in the emotion after 9/11, why, when these telephone companies were asked to help, they did it.

I have seen the documentation presented to us in closed session. All I can say about it is, it was extremely limited. There was no legal brief given to the telephone companies saying, this is the authority of the President. It was a very scant document with very little information in it. But this program went on way beyond 2001, 2002. It went on for years. And for years the telephone companies were surrendering this private information about their customers and access to their customers' conversations in a questionable situation under the law.

Some people are testing that in court. They want to know if the telephone companies went too far, if they broke the law, if they violated the Constitution. The President's belief, and the belief of many, is they shouldn't be challenged in court. They shouldn't be held accountable in court. They shouldn't have to answer as to whether they lived up to the law. There are others, like myself, who believe neither a President nor a telephone company is above the law.

If a telephone company, I believe, goes into court facing one of these challenges, and faces any jury of Americans and says, immediately after 9/11 we did what we thought would keep America safe, I would put all my money on that telephone company winning that part of the lawsuit. I think the American people would come down on their side. But there are important questions still unresolved as to whether these telephone companies went too far and whether we should be careful in the future not to give any President, this one or any future President, powers beyond the law. That is really what this battle comes down to.

The reason I was hoping the Senator from New Hampshire would stay on the floor is that I wanted to ask him, as I have asked every Republican Senator who has brought up this issue, if they are arguing that somehow or another the current situation—debating this law on foreign intelligence surveillance—is making living in America more dangerous, then they have to answer a very simple question: Why, repeatedly, over the last several weeks, when the Democrats offered to extend the law so it would continue without any missing intelligence in terms of the surveillance efforts being made, why did the Republicans, the President's party, consistently object to extending the law?

They can't have it both ways. They can't argue we are in a more dangerous situation because the law is not in place, and then object to extending the law. This is exactly what they are doing. They cannot have it both ways.

We have tried repeatedly to extend the Protect America Act while we debate what to do with the lawsuits involving telephone companies, and they have said no, let it expire. Then, they have gone public with television ads and speeches on the floor saying, woe is me, it looks like this law is going to expire, but it is because they objected to extending the law.

They are trying to play both sides of this issue politically, and that doesn't work. It is totally inconsistent, illogical, and I don't believe it is the right thing to do for this country. Let's finish this debate between the House and the Senate as to the liability of telephone companies, whether there will be immunity or liability. Let's reach an end point in terms of that debate on a timely basis. But in the meantime, why do the Republicans continue to object to extending this law so that there is no gap in coverage, so that there is no gap in the protection it offers to the people of this country? I think that is an important element that was missed in the earlier statement.

I wish to read, if I can, from what the USA Today recently said in an editorial.

Bush is pressing the House to accept the Senate bill and refusing to temporarily extend the current law, which recently expired.

According to the USA Today, they say:

That's irresponsible. The House and Senate need time to negotiate their differences because the House has no telecom immunity provision. Bush's implication that expiration of the law would expose the Nation to terrorist dangers is worse than disingenuous: The eavesdropping authorizations under the law continue for a year. Crucial decisions about civil liberties in an age of terror shouldn't be driven by fear-mongering.

That was from the USA editorial.

I think this President, unfortunately, is manufacturing a crisis. This is the same thing we heard from this President and this administration in the lead-up to our invasion of Iraq. They painted the most frightening picture of Iraq and Saddam Hussein—weapons of mass destruction which could be aimed at our allies in the Middle East, such as Israel, and aimed at the United States; Condoleezza Rice talking about mushroom-shaped clouds and nuclear weapons striking the United States; drawing linkage between Saddam Hussein and 9/11, when no linkage existed. That was the climate of fear this administration created before they asked this Senate to vote on whether we should authorize the invasion of Iraq.

They are trying to create a new climate of fear on the Foreign Intelligence Surveillance Act. That is fundamentally unfair to the American people. I must warn this President, and every President: The American people will only be frightened by red alerts, orange alerts, and all this rhetoric for so long before they turn it off. We don't ever want to reach that point. We want to make certain when we tell the American people a danger exists, it truly does exist.

If any danger exists now from the expiration of the Protect America Act, it is a danger created by the President's party in objecting to our efforts to extend this law. They cannot have it both ways. They cannot object to extending this law and then say to the American people: Be afraid. Be really afraid, because this law hasn't been extended. That is exactly what has happened.

Time and again this administration's allies have pressured Congress to consider controversial proposals immediately before an election. Now we see them raising another security issue in the run-up to an election. This comes from a playbook written by former adviser Karl Rove that the administration has used over and over again. Think about that vote for the authorization of war in the climate of fear the administration created, and then think of the reality of what we found on the ground when we went into Iraq. Despite heroic efforts by our men and women in uniform, despite their successes in deposing Saddam Hussein, despite the expenditure of billions of dollars, we have never, ever uncovered one shred of evidence of weapons of mass destruction that this administration warned us about. Not one shred of evidence of nuclear devices aimed at the United States or any other country, not one shred of evidence linking Saddam Hussein to 9/11. All of the fear gen-

erated by this administration before that vote has not been substantiated.

But the invasion of Iraq has been substantiated in another way, in almost 4,000 Americans' lives that have been lost, 25,000 seriously wounded, and at a cost to the United States and our Treasury—record amounts. By the end of this year, it is estimated we will have spent \$1 trillion on this war that this President created on a foreign policy decision which I think may be the worst in my lifetime and sadly endangering so many brave, courageous soldiers who serve our country in uniform and risk their lives when called to duty. It is unfortunate.

Yesterday, at the insistence of the Republicans, we ground to a halt the debate on the war policy in Iraq. It means we will have to wait several months. When we return to it, there will be more than 4,000 American casualties in this war, there will be more injured soldiers, and there will be more money spent.

This President is trying to run out the clock. He wants to leave that White House on January 20, 2009, turn the keys over to his successor, and say: Good luck in Iraq—to leave two wars behind and to leave the United States in turmoil in terms of our foreign policy around the world.

Well, it is imperative now that we have the truth on the floor, and the truth is that we have tried to extend this in law despite the objections of Republican Senators. The truth is that we can work out our differences, and we should do so in a bipartisan way. We all have the same goal here: Keep America safe.

We also want to make sure that when it comes to the use of military commissions for the trials of would-be terrorists, we have a commission or at least some form of justice that will stand up to the test of our Constitution.

I do not want a single person released from our detention, wherever they may be, who can endanger the United States. I want them all held responsible for what they have done to endanger us. But the fact is, there has been only one conviction in the 6 years, 6½ years since 9/11. The fact is, what has happened in Guantanamo has been the securing and detention of hundreds of prisoners for years at a time, many of whom have been released without a charge, to return back to their families and back to their countries with a bitter taste in their mouth about justice under this administration.

The American people will take a hard look at this issue in this election, as they should. One would hope the administration would have learned a lesson from what has occurred with the invasion of Iraq and what has occurred every time they have heightened fears before an election campaign.

The American people have the final word. Now the President is claiming our security is at risk because this Protect America Act has expired. But

at the same time, his party, the Republican Party, has time and again objected to extending this law. The American people have heard this song before. They are not going to buy it.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

REQUIRING A REPORT SETTING FORTH THE GLOBAL STRATEGY OF THE UNITED STATES TO COMBAT AND DEFEAT AL QAEDA AND ITS AFFILIATES—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 2634, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to consider calendar No. 576, S. 2634, a bill requiring a report setting forth the global strategy of the United States to combat and defeat al Qaeda and its affiliates.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I rise to make a number of points on the two Feingold bills which are before us. I will be happy, after I conclude my remarks, if my neighbor from Illinois, the majority whip, wants to come back and discuss some of the points he made. I believe I disagree strongly with them. But I wish to take the time to lay out my views of what is happening in Iraq and in our battle against al-Qaida and why the two measures before us make absolutely no sense.

On the second Feingold bill, he asks for a strategy dealing with al-Qaida. Let me assure you, as the ranking Republican, the vice chairman of the Intelligence Committee, I know one of the most important elements we have in dealing with al-Qaida is to be able to listen in on their electronic communications. That is covered by the Foreign Intelligence Surveillance Act.

On February 16, 2008, after being extended for an additional 15 days—and we agreed, the Republicans agreed, the President agreed to give an additional 15-day extension on the Protect America Act, but it expired. The Protect America Act which I was pleased to sponsor passed in Congress in August 2007 to provide a short-term legislative solution to intelligence gaps that were occurring because of the outdated Foreign Intelligence Surveillance Act, or FISA, which put a 6-month sunset on the PAA to give Congress ample time to work on permanent changes to FISA.

Our Intelligence Committee, in September, immediately answered the call. We went to work, and after many discussions among staff on both sides, members on both sides, visits to NSA, and in close collaboration with the intelligence community, we passed out a